

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

AMERICAN INTERCABLE, INC.

and

Case 3--CA--15981

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 166,
AFL--CIO

April 5, 1991
DECISION AND ORDER

By Chairman Stephens and Members Macraff and Oviatt
Upon a charge filed by International Brotherhood of Electrical Workers,

Local 166, AFL--CIO (the Union) on October 26, 1990, the General Counsel of the National Labor Relations Board issued a complaint on November 30, 1990, against American Intercable, Inc. (the Respondent) alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On January 29, 1991, the General Counsel filed a Motion for Summary Judgment. On January 31, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "'all the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board.'" Further, the undisputed allegations in the Motion for Summary Judgment disclose that by letter dated January 10, 1991, the counsel for the General Counsel notified the Respondent that unless an answer was filed by January 18, 1991, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer to the complaint, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Respondent, a New York corporation, is engaged in the business of installing cable and telecommunications equipment at its facility in Latham, New York, where it annually derives gross revenues in excess of \$50,000, of which an amount in excess of \$50,000 is derived from providing services to other employers directly engaged in interstate commerce. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. The Unit and the Union's Representative Status

The following employees of the Respondent constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All employees engaged in the erection, installation, maintenance, repair and service work of Telephone Interconnect Communication systems and devices including Private Branch Exchange, Key Equipment and associated devices; excluding work which properly comes under the jurisdiction of journeymen wiremen; guards and supervisors as defined in the Act.

At all material times the Union has been the designated exclusive collective-bargaining representative in the unit and has been recognized as such by the Respondent. The Respondent is a party to a collective-bargaining agreement with the Union which is effective from January 1, 1990, to January 1, 1991. By virtue of Section 9(a) of the Act, the Union is the exclusive representative of the unit employees for the purposes of collective bargaining, concerning rates of pay, wages, hours of employment and terms and conditions of employment.

B. The Violations

The collective-bargaining agreement described above contains provisions, inter alia, that require the Respondent to remit union working dues and pension fund contributions to the Union. These provisions of the collective-bargaining agreement concern mandatory subjects of bargaining. Since on or about April 29, 1990, the Respondent has failed to continue in full force and effect the terms of the collective-bargaining agreement by not remitting union working dues and paying specified contributions to the pension fund. By these acts and conduct, the Respondent has engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Conclusions of Law

By failing to continue in full force and effect the terms and conditions of its collective-bargaining agreement with the Union by failing to make contractually required pension contributions and remitting union working dues, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to make the contractually required payments to the pension fund it unlawfully failed to make.¹ The Respondent shall reimburse unit employees for any expenses ensuing from the Respondent's unlawful failure to make such payments as set forth in Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), with interest as provided in New Horizons for the Retarded, 283 NLRB 1173 (1987).

We shall also order the Respondent to remit the contractually required union working dues, with interest as provided in New Horizons, supra.

ORDER

The National Labor Relations Board orders that the Respondent, American Intercable, Inc., Latham, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

¹ We leave to the compliance stage the question whether the Respondent must pay any additional amounts into the benefit funds in order to satisfy our "'make-whole'" remedy. Merryweather Optical Co., 240 NLRB 1213, 1216 fn. 7 (1979).

(a) Refusing to bargain with International Brotherhood of Electrical Workers, Local 166, AFL--CIO, by failing and refusing to continue in full force and effect the terms and conditions of its collective-bargaining agreement with the Union by failing to make contractually required pension contributions and to remit union dues.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Adhere to the terms and conditions of its collective-bargaining agreement with the Union, including, but not limited to its provisions governing pension contributions and union working dues contributions.

(b) Make whole its unit employees by making all contributions to the pension fund that the Respondent unlawfully failed to make, and by reimbursing unit employees for any expenses ensuing from the Respondent's failure to make such payments, in the manner set forth in the remedy section of this decision.

(c) Remit to the Union contractually required union working dues that the Respondent unlawfully failed to make, with interest in the manner set forth in the remedy section of this decision.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll record, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(e) Post at its facility in Latham, New York, copies of the attached notice marked "'Appendix.'"² Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. April 5, 1991

James M. Stephens, Chairman

Mary Miller Cracraft, Member

Clifford R. Oviatt, Jr., Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with International Brotherhood of Electrical Workers, Local 166, AFL--CIO, by failing and refusing to continue in full force and effect the terms of our collective-bargaining agreement with the Union by failing to make contractually required pension contributions and to remit working dues to the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL adhere to the terms and conditions of our collective-bargaining agreement with the Union, including, but not limited to, its provisions governing pension contributions and working dues.

WE WILL make whole unit employees by making all contributions to the pension fund that we have unlawfully failed to make, and WE WILL reimburse unit employees for any expenses ensuing from our failure to make such payments, with interest.

WE WILL remit to the Union contractually required union working dues that we unlawfully failed to remit, with interest.

AMERICAN INTERCABLE, INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 111 West Huron Street, Room 901, Buffalo, New York 14202-2387, Telephone 716--846--4951